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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/207,653	08/11/2011	Paul Scirica	H-US-02886 (203-7871)	6426
50855	7590	02/01/2017	EXAMINER	
Covidien LP 555 Long Wharf Drive Mail Stop 8N-1, Legal Department New Haven, CT 06511			JALLOW, EYAMINDAE CHOSSAN	
			ART UNIT	PAPER NUMBER
			3721	
			NOTIFICATION DATE	DELIVERY MODE
			02/01/2017	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAUL SCIRICA and DAVID RACENET

Appeal 2015-003854
Application 13/207,653¹
Technology Center 3700

Before MICHAEL C. ASTORINO, JAMES A. WORTH, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision finally rejecting claims 1–4, 6–9, 11, 14–24, and 26–29. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

¹ According to the Appellants, “[t]he real party in interest . . . is Covidien LP.” Br. 1.

STATEMENT OF THE CASE

Claimed Subject Matter

Claim 1, the sole independent claim, is representative of the subject matter on appeal and is reproduced below.

1. A surgical stapler, comprising:

a handle assembly including a stationary handle, an approximation mechanism, and a firing trigger for firing a plurality of surgical fasteners; and

an end effector supported on a distal end of the handle assembly, the end effector including:

a circular anvil assembly, including:

an anvil center rod having a proximal end configured for selective connection to the approximation mechanism and a distal end, the center rod defining a central longitudinal axis; and

an anvil head secured to the distal end of the anvil center rod, the anvil head including:

an anvil plate defining a tissue contact surface; and

at least two annular rows of a plurality of staple forming pockets formed in the tissue contact surface of the anvil plate, wherein each of the plurality of staple forming pockets has a curved length, the length of each staple forming pocket of a relatively inner annular row of staple forming pockets of the anvil assembly being relatively shorter than the length of each staple forming pocket of a relatively outer annular row of staple forming pockets of the anvil assembly; and

a circular staple cartridge assembly defining at least two rows of a plurality of staple retaining slots corresponding to a number of staple forming pockets of the anvil assembly, the staple cartridge assembly including a plurality of surgical staples supported therein in a spaced relation to each other.

Rejection

Claims 1–4, 6–9, 11, 14–24, and 26–29 are rejected under 35 U.S.C. § 103(a) as unpatentable over Vresh et al. (US 7,080,769 B2, iss. July 25, 2006) (hereinafter “Vresh”) and Viola (WO 03/094747 A1, pub. Nov. 20, 2003).

ANALYSIS

The Appellants contend that the Examiner’s rejection “fail[s] to establish that Vresh in view of Viola discloses, teaches, or suggests ‘each of the plurality of staple forming pockets has a curved length,’ as recited in claim 1.” Br. 6.

The Examiner finds that Vresh’s conventional staple engaging grooves 126, on anvil segments 122, 124, correspond with “at least two annular rows of a plurality of staple forming pockets formed in the tissue contact surface of the anvil plate,” as recited in claim 1. *See* Final Act. 3. Also, the Examiner finds that grooves 126 “ha[ve] a curved length (see diagram 1 below).” *Id.* The Examiner’s reference to “diagram 1” appears to be a copy of a portion of Vresh’s Figure 3a, which illustrates some of grooves 126 on anvil segments 122, 124. *Id.* at 14. This portion of the figure is significantly augmented in size. *Id.* The Examiner annotated the figure by drawing a “secant line” along the length of one of grooves 126. *Id.* The Examiner’s position is that:

The secant line drawn on Vresh’s staple engaging groove is there to illustrate that said staple engaging groove is not linear. The space between the secant line and staple engaging groove deems the staple engaging groove curved.

Ans. 2.

Although a space between the secant line and groove 126 is apparent in the Examiner's annotated figure (*see* Final Act. 14), we cannot discount the fact that the space appears to be the result of the significantly augmented size of the figure. In an unaltered format of Figure 3a, a similarly positioned line on groove 126 does not result in a space between the line and groove 126. Rather, the line appears to overlap the outline of groove 126. Accordingly, we find on this set of facts that Examiner's use of a secant line — after significantly augmenting Figure 3a — is inadequate evidence to support the Examiner's finding that grooves 126 have a curved length.

Further, we note that the Appellants persuasively contend that “the alleged curved appearance of staple engaging grooves 126 in FIG. 3a of Vresh is merely the result of staple engaging grooves 126 being illustrated in the annular-shaped anvil 120, thus giving staple engaging grooves 126 an illusory appearance of curvature, if any.” Br. 4.

Additionally, we note that the Examiner does not appear to support the finding that grooves 126 have a curved length with the description in Vresh's Specification, and the Examiner's rejection does not rely on Viola to teach that “each of the plurality of staple forming pockets has a curved length,” as recited in independent claim 1.

Thus, we do not sustain the Examiner's rejection of independent claim 1, and its dependent claims 2–4, 6–9, 11, 14–24, and 26–29, as unpatentable over Vresh and Viola.

Appeal 2015-003854
Application 13/207,653

DECISION

We REVERSE the Examiner's decision rejecting claims 1–4, 6–9, 11, 14–24, and 26–29.

REVERSED